



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/303,632    05/03/99    LEBEAU    C    D-7102

ARTHUR G YEAGER PA  
112 WEST ADAMS STREET  
SUITE 1305  
JACKSONVILLE FL 32202

MM91/1101

EXAMINER

GROHUSKY, L

ART UNIT

PAPER NUMBER

2854

DATE MAILED:

11/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/303,632

Applicant(s)

LEBEAU ET AL

Examiner

Leslie J. Grohusky

Art Unit

2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09/25/2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-27 and 32-38 is/are rejected.
- 7) ☒ Claim(s) 28-31, 39 and 40 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 25 September 2000 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 17) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: \_\_\_\_\_

Art Unit: 2854

## DETAILED ACTION

### *Drawings*

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on September 25, 2000 have been approved by the Examiner.
2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21, 24, 32, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson (US 5,944,432). Richardson teaches a package of disposable transparent covers for protecting a keyboard 11 wherein each cover includes a transparent sheet of pliable plastic film to protect the upper surface of the keyboard as recited, wherein each sheet is of a predetermined size (for example, a finite width) including a long top edge, a long bottom edge, and two short side edge portions. See in

BEST AVAILABLE COPY

Art Unit: 2854

particular Figures 1a and 2a and column 1, lines 37-67. Additionally note that the last 4 lines of the claim is merely a functional recitation of a desired mode of operation and therefore not given any significant patentable weight. Furthermore, note that the term "individually formed" is so broad as to obviously include the multiple attached covers of Richardson as a single roll or the multiple rolls as taught in column 2, lines 63-65.

With respect to claims 24 and 35, note that the sheet 6 is drawn across the stretcher 3 and therefore covers the entire keyboard and thus, will obviously protect both the upper and lower surfaces of the keyboard, as broadly recited by applicant.

5. Claims 22-23 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson as applied to claims 21, 24, 32, and 35 above, and further in view of Morse (US 4,438,300). Richardson teaches structure as recited with the exception of the transparent sheet including strips of adhesive to allow the sheet to be attached to the keyboard. Morse teaches a transparent protective cover 10 for a keypad including adhesive strips 21 along each side to facilitate attachment of the cover to the push-button array, as shown in Figures 4-5 and taught in column 3, lines 32-38. In view of this teaching, it would have been obvious to use adhesive strips as taught by Morse on the keyboard cover of Richardson in order to provide better securing of the cover to the keyboard.

BEST AVAILABLE COPY

Art Unit: 2854

6. Claims 25-27 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson as applied to claims 21, 24, 32, and 35 above, and further in view of Nopper et al. (5,021,638) and Weill et al. (US 5,931,297). Richardson teaches a package of covers as recited with the exception of the cover having a sheet having an upper and lower member adapted to overlies the upper and lower surfaces of the keyboard as recited. Nopper et al. teach a flexible keyboard cover designed as a single sheet including an upper portion **24** and a lower portion **50, 40** that can wrap around the ends of the keyboard to completely enclose it, as shown in Figures 3a and described in column 4, lines 36-56. Furthermore, Weill et al. teach a flexible cover **10** for a keyboard including an upper member **17** being adapted to overlies the upper surface of the keyboard and a lower member **29** adapted to overlies the bottom surface of the keyboard. See in particular Figure 1 and column 4 of Weill et al. In view of these teachings, it would have been obvious to one of ordinary skill in the art to make the package of protective sheets of Richardson of a configuration including an upper and lower member that can wrap around the keyboard as taught by Nopper et al. and Weill et al. to provide an enclosure surrounding the keyboard which is completely disposable and replaceable to protect the keyboard from contaminants.

With respect to claims 26 and 37, note the cover of Weill et al. includes an opening **12** along an elongated top edge portion **18**, as shown in Figure 1.

With respect to claims 27 and 38, note Weill et al. teach a cover formed as an envelope including an opening to allow the keyboard to be placed inside the cover and

BEST AVAILABLE COPY

Art Unit: 2854

furthermore, there is no unobviousness in providing an opening along any edge portion of the cover for ease of entry (such as in a sleeping bag). It appears that the selection of which edge is open to allow insertion of the keyboard involves nothing more than an obvious matter of design choice and can depend upon such factors as whether the user is right-handed or left-handed.

### ***Allowable Subject Matter***

7. Claims 28-31 and 39-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or suggest an package of disposable keyboard covers as recited and particularly including the cover being formed from two identical flat sheets of plastic film as recited.

### ***Response to Arguments***

8. Applicant's arguments filed September 25, 2000 have been fully considered but they are not persuasive of any error in the above rejections. Applicant presents several arguments with respect to the prior art references.

With respect to the Richardson patent ('432), applicant argues that Richardson fails to teach a keyboard cover providing "enhanced protection of the sterility of the

BEST AVAILABLE COPY

Art Unit: 2854

keyboard." The Examiner disagrees with this argument. In particular, the particular language applicant is referring to is a functional statement of a desired mode of operation and applicant fails to recite any additional structure that is necessary to provide that function. Therefore, since Richardson teaches the structure of the cover as recited, it would appear that the cover of Richardson inherently provides that function. Regardless, note that Richardson teaches in column 3, lines 44-46 that the cover is an effective barrier to the transmission of germs between a user and the keyboard.

Additionally, applicant argues that Richardson does not teach keyboard covers that are "individually formed of a predetermined size." Again, the Examiner disagrees. Note that the roll of Richardson has a finite width and length and therefore is a "predetermined size" as broadly recited by applicant. Furthermore, note that the term "individually formed" is broad and open to interpretation. Therefore, it is the Examiner's position that the claim language fails to overcome the applied prior art.

Further, applicant argues that Richardson does not teach a sheet that "covers" the bottom of the keyboard and is transparent as recited in claim 24 and 35. Again, the Examiner disagrees. Firstly, the Examiner would like to point out that applicant's arguments are more specific than the claim language. The claim requires that the sheet merely "protect" both surfaces of the keyboard, not "cover" them as applicant argues. It is the Examiner's position that the cooperation of the sheet with the stretcher member in Richardson provide a partially closed environment which "protects" the upper and

Art Unit: 2854

bottom surfaces of the keyboard to help maintain sterility of the keyboard surface.

Therefore, the Examiner is not persuaded by this argument.

Additionally, with respect to the prior art rejection using Richardson in view of Morse, applicant states that the cover of Morse is not designed to be connected, used for a single patient, removed and discarded. Firstly, note that the claim language does not specifically recite any of these ideas and thus it again appears that applicant's arguments are more specific than the claim language. Furthermore, note that the Examiner is not relying upon Morse for a teaching of disposability and/or exchangeability and therefore it is not clear what applicant's intention is with respect to these arguments.

In response to applicant's argument that the teachings of Morse would not teach one of ordinary skill in the art how to reconstruct Richardson to provide adhesive strips to the back surface of the covers of Richardson, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is the Examiner's position that the combined teachings of Richardson and Morse would have suggested the idea of providing adhesive strips onto a keyboard cover to aid in holding the keyboard cover in place.

BEST AVAILABLE COPY



Art Unit: 2854

In response to applicant's argument that it is not clear from the teachings of Nopper et al. and Weill et al. how the cover of Richardson could be "reconstructed" to wrap around the keyboard, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, it is the Examiner's position that the teachings of Richardson, Nopper et al., and Weill et al. would, as noted above, render the claim obvious.

Due to the reasons set forth above, the Examiner is not persuaded of any error in the above rejections.

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Campoli (US 5,509,573) teaches a replaceable keyboard cover to help maintain a keyboard in an aseptic condition, as described in column 4, lines 53-57 and shown in Figure 1.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

BEST AVAILABLE COPY

Art Unit: 2854

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Leslie J. Grohusky** whose telephone number is **(703) 308-0786**. The examiner can normally be reached on M-Th 7:30 am-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John S. Hilten can be reached on (703) 308-0719. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

BEST AVAILABLE COPY

Application/Control Number: 09/303,632

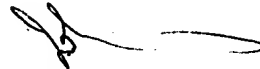
Page 10

Art Unit: 2854

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

ds  
ljg

October 27, 2000



JOHN S. HILTEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800

BEST AVAILABLE COPY